

UNIFORM COMMERCIAL CODE (EXCERPT)

Act 174 of 1962

ARTICLE 1

GENERAL PROVISIONS

PART 1

SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER OF THE ACT

440.1101 Uniform commercial code; short title.

Sec. 1101. This act shall be known and may be cited as “uniform commercial code”.

History: 1962, Act 174, Eff. Jan. 1, 1964.

440.1102 Construction of act; purposes; variation by agreement.

Sec. 1102. (1) This act shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of this act are

(a) to simplify, clarify and modernize the law governing commercial transactions;

(b) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties;

(c) to make uniform the law among the various jurisdictions.

(3) The effect of provisions of this act may be varied by agreement, except as otherwise provided in this act and except that the obligations of good faith, diligence, reasonableness and care prescribed by this act may not be disclaimed by agreement but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable.

(4) The presence in certain provisions of this act of the words “unless otherwise agreed” or words of similar import does not imply that the effect of other provisions may not be varied by agreement under subsection (3).

(5) In this act unless the context otherwise requires

(a) words in the singular number include the plural, and in the plural include the singular;

(b) words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender.

History: 1962, Act 174, Eff. Jan. 1, 1964.

440.1103 Supplementary principles of law applicable.

Sec. 1103. Unless displaced by the particular provisions of this act, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions.

History: 1962, Act 174, Eff. Jan. 1, 1964.

440.1104 Construction of act as to implied repeal by subsequent legislation.

Sec. 1104. This act being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

History: 1962, Act 174, Eff. Jan. 1, 1964.

440.1105 Agreement as to law governing rights and duties of parties; act applicable to transactions upon failure to agree; effect of contrary agreement where act specifies applicable law.

Sec. 1105. (1) Except as provided in this section, if a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of the other state or nation shall govern their rights and duties. Failing agreement this act applies to transactions bearing an appropriate relation to this state.

(2) If 1 of the following provisions of this act specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) specified:

Rights of creditors against sold
goods.

Section 2402.

Applicability of the article on leases.	Sections 2A105 and 2A106.
Applicability of the article on bank deposits and collections.	Section 4102.
Governing law in the article on funds transfers.	Section 4A507.
Letters of credit.	Section 5116.
Applicability of the article on investment securities.	Section 8110.
Law governing perfection, the effect of perfection or nonperfection, and the priority of security interests and agricultural liens.	Sections 9301 through 9307.

History: 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1978, Act 369, Eff. Jan. 1, 1979;—Am. 1992, Act 100, Imd. Eff. June 25, 1992;—Am. 1992, Act 101, Eff. Sept. 30, 1992;—Am. 1998, Act 278, Imd. Eff. July 27, 1998;—Am. 1998, Act 488, Imd. Eff. Jan. 4, 1999;—Am. 1998, Act 489, Imd. Eff. Jan. 4, 1999;—Am. 2000, Act 348, Eff. July 1, 2001.

440.1106 Liberal administration of remedies; enforcement.

Sec. 1106. (1) The remedies provided by this act shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special nor penal damages may be had except as specifically provided in this act or by other rule of law.

(2) Any right or obligation declared by this act is enforceable by action unless the provision declaring it specifies a different and limited effect.

History: 1962, Act 174, Eff. Jan. 1, 1964.

440.1107 Discharge of claim or right after breach; consideration.

Sec. 1107. Any claim or right arising out of an alleged breach can be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

History: 1962, Act 174, Eff. Jan. 1, 1964.

PART 2

GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

440.1201 Definitions.

Sec. 1201. Subject to additional definitions contained in the subsequent articles of this act which are applicable to specific articles or parts of this act, and unless the context otherwise requires, in this act:

(1) “Action” in the sense of a judicial proceeding includes recoupment, counterclaim, setoff, suit in equity, and any other proceedings in which rights are determined.

(2) “Aggrieved party” means a party entitled to resort to a remedy.

(3) “Agreement” means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this act (sections 1205 and 2208). Whether an agreement has legal consequences is determined by the provisions of this act, if applicable; otherwise by the law of contracts (section 1103). (Compare “Contract”).

(4) “Bank” means any person engaged in the business of banking.

(5) “Bearer” means the person in possession of an instrument, document of title, or certificated security payable to bearer or indorsed in blank.

(6) “Bill of lading” means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. “Airbill” means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) “Branch” includes a separately incorporated foreign branch of a bank.

(8) “Burden of establishing a fact” means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(9) “Buyer in ordinary course of business” means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the good, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business

in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under article 2 may be a buyer in ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt is not a buyer in ordinary course of business.

(10) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: non-negotiable bill of lading) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this act and any other applicable rules of law. (Compare "Agreement".)

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper, or certificated securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt, or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold, and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission, or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this act to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder", with respect to a negotiable instrument, means the person in possession if the instrument is payable to bearer or, in the case of an instrument payable to an identified person, if the identified person is in possession. Holder, with respect to a document of title, means the person in possession if the goods are deliverable to bearer or to the order of the person in possession.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his or her debts in the ordinary course of business or cannot pay his or her debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government and includes a monetary unit of account established by an intergovernmental organization or by agreement between 2 or more nations.

(25) A person has "notice" of a fact when he or she has actual knowledge of it; he or she has received a notice or notification of it; or from all the facts and circumstances known to him or her at the time in question he or she has reason to know that it exists. A person "knows" or has "knowledge" of a fact when he or she has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this act.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when 1 of the following occurs:

(a) It comes to his or her attention.

(b) It is duly delivered at the place of business through which the contract was made or at any other place

held out by him or her as the place for receipt of such communications.

(27) Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to the individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his or her regular duties or unless he or she has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership or association, 2 or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party", as distinct from "third party", means a person who has engaged in a transaction or made an agreement within this act.

(30) "Person" includes an individual or an organization (see section 1102).

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The term also includes any interest of a consignor and a buyer of an account, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to article 9. The special property interest of a buyer of goods on identification of those goods to a contract for sale under section 2401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with article 9. Except as otherwise provided in section 2505, the right of a seller or lessor of goods under article 2 or 2A to retain or acquire possession of the goods is not a "security interest", but a seller or lessor may also acquire a "security interest" by complying with article 9. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (section 2401) is limited in effect to a reservation of a "security interest". Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and any of the following:

(a) The original term of the lease is equal to or greater than the remaining economic life of the goods.

(b) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods.

(c) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

(d) The lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

A transaction does not create a security interest merely because it provides any of the following:

(a) The present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into.

(b) The lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods.

(c) The lessee has an option to renew the lease or to become the owner of the goods.

(d) The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed.

(e) The lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

As used in this subsection:

(a) Additional consideration is not nominal if when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or when the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised.

(b) "Present value" means the amount as of a date certain of 1 or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(c) "Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into.

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived, if properly sent, has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing, including a carbon copy of his or her signature.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized" signature means one made without actual, implied or apparent authority and includes a forgery.

(44) "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (sections 3303, 4208, and 4209) a person gives "value" for rights if the person acquires them:

(a) In return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

(b) As security for or in total or partial satisfaction of a preexisting claim; or

(c) By accepting delivery pursuant to a preexisting contract for purchase; or

(d) Generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting, or any other intentional reduction to tangible form.

History: 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1964, Act 250, Eff. Aug. 28, 1964;—Am. 1978, Act 369, Eff. Jan. 1, 1979;—Am. 1987, Act 16, Imd. Eff. Apr. 24, 1987;—Am. 1992, Act 101, Eff. Sept. 30, 1992;—Am. 2000, Act 348, Eff. July 1, 2001.

440.1202 Prima facie evidence by third party documents.

Sec. 1202. A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party shall be prima facie evidence of its own authenticity and genuineness and of the fact stated in the document by the third party.

History: 1962, Act 174, Eff. Jan. 1, 1964.

440.1203 Contracts and duties; obligation of good faith in performance or enforcement.

Sec. 1203. Every contract or duty within this act imposes an obligation of good faith in its performance or enforcement.

History: 1962, Act 174, Eff. Jan. 1, 1964.

440.1204 Time; reasonable time; seasonably, definition.

Sec. 1204. (1) Whenever this act requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.

(2) What is a reasonable time for taking any action depends on the nature, purpose and circumstances of such action.

(3) An action is taken “seasonably” when it is taken at or within the time agreed or if no time is agreed at or within a reasonable time.

History: 1962, Act 174, Eff. Jan. 1, 1964.

440.1205 Course of dealing; usage of trade, evidence.

Sec. 1205. (1) A course of dealing is a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(2) A usage of trade is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage are to be proved as facts. If it is established that such a usage is embodied in a written trade code or similar writing the interpretation of the writing is for the court.

(3) A course of dealing between parties and any usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware give particular meaning to and supplement or qualify terms of an agreement.

(4) The express terms of an agreement and an applicable course of dealing or usage of trade shall be construed wherever reasonable as consistent with each other; but when such construction is unreasonable express terms control both course of dealing and usage of trade and course of dealing controls usage of trade.

(5) An applicable usage of trade in the place where any part of performance is to occur shall be used in interpreting the agreement as to that part of the performance.

(6) Evidence of a relevant usage of trade offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise to the latter.

History: 1962, Act 174, Eff. Jan. 1, 1964.

440.1206 Statute of frauds as to personal property not otherwise covered.

Sec. 1206. (1) Except in the cases described in subsection (2) of this section, a contract for the sale of personal property is not enforceable by way of action or defense beyond \$5,000.00 in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by his or her authorized agent.

(2) Subsection (1) of this section does not apply to contracts for the sale of goods (section 2201) nor of securities (section 8113) nor to security agreements (section 9203).

History: 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1998, Act 278, Imd. Eff. July 27, 1998.

440.1207 Performance or acceptance of reservation of rights; applicability of subsection (1) to accord and satisfaction.

Sec. 1207. (1) A party who with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as “without prejudice”, “under protest” or the like are sufficient.

(2) Subsection (1) does not apply to an accord and satisfaction.

History: 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

440.1208 Right to accelerate or require collateral.

Sec. 1208. A term providing that one party or his successor in interest may accelerate payment or performance or require collateral or additional collateral “at will” or “when he deems himself insecure” or in words of similar import shall be construed to mean that he shall have power to do so only if he in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against whom the power has been exercised.

History: 1962, Act 174, Eff. Jan. 1, 1964.

440.1209 Subordination of obligation or right to payment; security interest not created; construction of section.

Sec. 1209. An obligation may be issued as subordinated to payment of another obligation of the person obligated, or a creditor may subordinate his right to payment of an obligation by agreement with either the person obligated or another creditor of the person obligated. Such a subordination does not create a security interest as against either the common debtor or a subordinated creditor. This section shall be construed as declaring the law as it existed prior to the enactment of this section and not as modifying it.

History: Add. 1978, Act 369, Eff. Jan. 1, 1979.

440.1210 Definitions; subject or medium of payment as euro or ECU.

Sec. 1210. (1) As used in this section and section 1211:

(a) "ECU" or "European currency unit" means the currency basket that is from time to time used as the unit of account of the European union as defined in European council regulation no. 3320/94.

(b) "Euro" or "euros" means the currency of participating member states of the European union that adopt a single currency in accordance with the treaty on European union signed February 7, 1992. Member states are those that have decided to adopt the Euro, and other member states that may choose to participate.

(c) "Introduction of the euro" means, but is not limited to, the implementation from time to time of an economic and monetary union in member states of the European union under the treaty on European union of February 7, 1992.

(2) If a subject or medium of payment of a contract, security, or instrument is a currency that has been substituted or replaced by the euro, the euro shall be a commercially reasonable substitute and substantial equivalent that may be either of the following:

(a) Used in determining the value of that currency.

(b) Tendered at the conversion rate specified in and calculated according to the regulations adopted by the council of the European union.

(3) If a subject or medium of payment of a contract, security, or instrument is the ECU, the euro shall be a commercially reasonable substitute and substantial equivalent that may be either of the following:

(a) Used in determining the value of that currency.

(b) Tendered at the conversion rate specified in and calculated according to the regulations adopted by the council of the European union.

(4) Unless the parties to a contract, security, or instrument described in subsection (2) or (3) agree otherwise, the tendering of money under that contract, security, or instrument may only be made in either of the following:

(a) Euros.

(b) The currency originally designated by the contract, security, or instrument, if that originally designated currency remains legal tender at the time of performance.

History: Add. 1998, Act 395, Imd. Eff. Dec. 17, 1998.

440.1211 Contract, security, or instrument; introduction of euro to agreement between contracting parties; reference to ECU.

Sec. 1211. (1) The right to tender payment in a currency described in section 1210(4)(b) is not affected by either of the following:

(a) The currency has been substituted or replaced by the euro.

(b) The currency is considered a denomination of the euro and has a fixed conversion rate with respect to the euro.

(2) None of the following discharge or excuse performance under a contract, security, or instrument or give a party the right unilaterally to alter or terminate a contract, security, or instrument:

(a) The introduction of the euro.

(b) Tendering euros under section 1210 in connection with any obligation.

(c) Determining the value of an obligation in compliance with section 1210.

(d) Calculating or determining the subject or medium of payment of a contract, security, or instrument under section 1210 with reference to an interest rate or other calculation rate that has been substituted or replaced due to the introduction of the euro and that is a commercially reasonable substitute for and substantial equivalent to an original interest rate.

(3) A reference to ECU in a contract, security, or instrument without defining ECU is presumed to be a reference to the currency basket that is from time to time used as the unit of account of the European community. The presumption is rebuttable by showing that the presumption is contrary to intention of the parties.

(4) When an agreement between parties to a contract specifically relates to the introduction of the euro and is in conflict with this section or section 1210, the agreement between the parties to the contract controls.

(5) This section and section 1210 apply to all contracts, securities, and instruments, including contracts with respect to commercial transactions, and are not displaced by any other law of this state.

(6) In a circumstance of currency alteration other than the introduction of the euro, this section and section 1210 do not create a negative inference or negative presumption regarding the validity or enforceability of a contract, security, or instrument denominated in whole or part in a currency affected by that alteration.

(7) This section and section 1210 apply to a contract, security, and instrument entered into or issued before,

on, or after the effective date of the amendatory act that added this section.

History: Add. 1998, Act 394, Imd. Eff. Dec. 17, 1998.